

## REMARKS

Claims 1, 14, 15, 18, 31 and 35 have been amended and new claims 36 through 43 have been added.

The words “resilient” and “filler” have been removed from the amended claims, as they are not required to define the invention under § 112. While the bioabsorbable body is briefly described as “resilient” in the Summary of the Invention portion of the application, throughout the Detailed Description portion of the application, the bioabsorbable body is repeatedly referred to as a “body” without reference to its resiliency. See, for example, ¶¶ 47, 53 and 56. Accordingly, the removal of the words “resilient” and “filler” from the amended claims does not constitute the introduction of new matter. The originally claimed subject matter has been retained in new claim 36.

The Examiner’s art rejections are primarily based on U.S. Patent No. 6,340,367 to Stinson et al., which discloses retrievable radiopaque markers for use with implantable endoprostheses such as stents, stent-grafts, grafts and filters. The retrievable radiopaque markers are located on the endoprostheses to assist in identifying the location of the endoprostheses after the endoprostheses have been implanted into a patient to function as endoprostheses. In order to more clearly distinguish the invention over Stinson et al., claim 1 has been amended to define the body as being “adapted to be inserted into a subcutaneous cavity created by the removal of tissue.” Stinson et al. does not disclose a marking device having at least one detectable marker associated with at least one bioabsorbable body and located in at least one point on or within the three dimensional volume of the bioabsorbable body for insertion into a cavity created by the removal of tissue to identify a particular section of sections of the cavity. Rather, Stinson et al. is directed to markers positioned on a stent (or other endoprostheses) to identify the location of the stent after the stent is positioned into an artery or vein.


In light of the foregoing, the Examiner’s rejection of claims 1-3, 7-10, 14, 15, 21-24, 26 and 31 under 35 U.S.C. § 102(e) and rejection of claim 18 under 35 U.S.C. § 103 have been obviated. Accordingly, the application is in condition for allowance, and formal notice thereof is

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Amendment

respectfully requested.

The applicants hereby authorize the Commissioner under 37 C.F.R. §1.136(a)(3) to treat any paper that is filed in this application, which requires an extension of time, as incorporating a request for such an extension. The Commissioner is authorized to charge any additional fees required by this paper or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Victor J. Wasylyna', written over a horizontal line.

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